

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION
2:12cv11**

DAVID LYNN WILLIS,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

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ORDER

Pending before the Court is the Motion to Receive New and Material Evidence [#13] and the Agreed Motion for Extension to Time[#17]. This Court has repeatedly warned counsel for Plaintiff about the deficiencies of his pleadings in Social Security cases. See Chandler v. Astrue, No. 1:11cv229, 2012 WL 5336216 (W.D.N.C. Oct. 2, 2012) (Howell, Mag. J.); (Howell, Mag. J.); Pascoe v. Astrue, No. 1:11cv226, 2012 WL 3528054, at n.2 (W.D.N.C. Jul. 23, 2012) (Howell, Mag. J.) As this Court previously noted, it also appears to the Court that same individual is drafting all the pleadings for the attorney of record in this case, Stanford Clontz , is drafting the pleadings in social security cases where Lamar Gudger is the attorney of record. Both this Court and the District Court have sanctioned Attorney Gudger for his conduct in social security cases and his failure

to comply with the Court's prior Orders. See e.g. Hardy v. Astrue, No. 1:11cv299, 2013 WL566020 (W.D.N.C. Feb. 13, 2013) (Reidinger, J.); Hardy v. Astrue, No. 1:11cv299, 2013 WL 66082 (W.D.N.C. Jan. 4, 2013) (Howell, Mag. J.); Hardy v. Astrue, No. 1:11cv299, 2012 WL 2711478 (W.D.N.C. Jul. 9, 2012) (Howell, Mag. J.). As the attorney signing the pleadings, it is Attorneys Clontz and Gudger who are responsible for ensuring that their pleadings comply with the Court's prior Orders as well as the dictates of Rule 11 of the Federal Rules of Civil Procedure, regardless of who is actually drafting the pleadings. See Fed. R. Civ. P. 11(b). Despite these numerous warnings and sanctions, both attorneys continue to submit the same unsupported briefs to this Court.

Here, Plaintiff has filed a Motion to Receive New and Material Evidence [# 13]. Plaintiff, however, fails to provide the legal standard for when the Court may consider new evidence or make any legal argument as to why consideration of such evidence is required in this case. The memorandum is almost entirely a summary of the new evidence Plaintiff wants this Court to consider. Although the memorandum does attempt to provide a citation to the recent decision of the United States Court of Appeals for the Fourth Circuit, Bird v. Comm'n Soc. Sec. Admin., 699 F.3d 337 (4th Cir. 2012), Plaintiff fails to even state the holding of Bird, much less how Bird applies in this case. As a result of counsel's failure to

comply with the Court's prior Orders, and counsel's continued disregard for his obligations as counsel of record in this case, the Court **STRIKES** the Motion to Receive New and Material Evidence [#13]. The Court, however, will allow Plaintiff until February 26, 2013, to submit a new motion with supporting brief to this Court. The legal memorandum must set forth the applicable legal standard for considering new evidence as well as for any other relief requested in the motion. To the extent Plaintiff intends to rely on Bird, Plaintiff should set forth the holding of Bird and explain how it applies to the facts of this case. Counsel should also provide the Court with proper legal citations so that the Court can locate and review the cited materials. Finally, the Court **DIRECTS** counsel that this brief must be researched and drafted by attorney Stanford Clontz. Attorney Clontz should submit an affidavit with this new brief stating that he personally researched and drafted the brief. In addition, this affidavit should state that Attorney Clontz has personally read in their entirety each case cited in the legal memorandum. Whomever is writing the briefs for Attorneys Clontz and Gudger in social security cases has wasted enough of this Court's time. Because the Court is striking Plaintiff's motion [# 13], the Court **DENIES as moot** the Consent Motion for Extension of Time [# 17].

Signed: February 20, 2013

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

